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EXAMINER

SORKIN, DAVID L

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 08/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/933,013

Applicant(s)

MCGILL, SHANE R.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 59-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 59-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Objections*

1. In claim 61, line 2, "scating" apparently should read - - seating - -.
2. Claims 59-67, 71-73, 75 and 76 are objected to as failing to comply with 37 CFR 1.75(d)(1) which states "the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description". Applicant is hereby required to amend the specification to explicitly state what the corresponding structures are for the following means-plus-function recitations (see *In re Wolfensperger* 133 USPQ 537 (CCPA 1962) and MPEP 2181 regarding this requirement):
  - a. "securing means arranged to engage the container for securing the vessel during blending", recited in claim 59;
  - b. "means for releasably locating the container between a container support on which the vessel is supported during blending and a securing member engageable with the vessel", recited in claim 62;
  - c. "mounting means for supporting the container" and "securing means arranged to engage the container during blending for securing the vessel on the mounting means", recited in claim 71;
  - d. "mounting means including the drive means", recited in claim 75; and
  - e. "securing means for securing the vessel in relation to the drive means during blending" and "means for releasably locating the vessel between a vessel

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support on which the lid is locatable and a securing member engagable with the vessel during a blending action".

New matter must not be added.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 59-67 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No support is found in the originally filed specification for the new negative limitation "secured without the use of a screw threaded connection", recited in new independent claim 59. The specification fails to discuss the concept of using or not using "a screw threaded connection" in any manner. See *Ex parte Grasselli et al.* 231 USPQ 393 (Bd. Pat. App. & Inter. 1983) regarding negative limitations which introduce new concepts being new matter.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 59-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are rendered indefinite by the limitation

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"securing means arranged to engage the container...", recited in independent claim 59. According to the preamble of claim 59, "A container" is being claimed. It is unclear if the "securing means arranged to engage the container" is part of the claimed "container". It is unclear what, if anything, disclosed in the instant specification constitutes corresponding structure for the "securing means". In dependent claim 62, the limitation "the securing means includes means for releasably locating the container between a container support on which the vessel is supported during blending and a securing member engagable with the vessel" is additionally unclear. If only the "container" is being claimed, what is the relevance of this limitation? It is unclear what the corresponding structure(s) for "means for releasably locating..." is/are. While it is understood that, in the embodiment of Fig. 2, the container is between "tube 11" and "housing 7" it is not clear if these elements are corresponding structure for the "means for locating". In any case, tube 11 and housing 7 are certainly not part of the "container" according to the instant specification. It must be made clear, firstly, whether just the "container" is being claimed, or more than just the container is being claimed, and secondly, what the corresponding structures for the "securing means" and "means for locating" are.

7. Claims 71-73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 71 there is lack of antecedent basis for "the container". Also, it is unclear what the corresponding structures are for "mounting means for supporting the container" and "securing means arranged to engage the

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container during blending for securing the vessel on the mounting means", recited in claim 71.

8. Claims 76 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the corresponding structures are for "securing means for securing the vessel in relation to the drive means during blending" and "means for releasably locating the vessel between a vessel support on which the lid is locatable and a securing member engagable with the vessel during a blending action".

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 59-64, 74, 75 and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Waters (US 2,930,596). Regarding claim 59, Waters ('596) discloses a vessel (11) having an upper opening through which food product is chargeable into the vessel, a lid (20,21,22,23) for closing the upper opening, the lid being fitted over the opening and secured without the use of a screw threaded connection (see Figs. 1 and 3; col. 2, lines 3-7), blending means (including 24,25,26,27) for blending the food product in the container, the blending means including an impeller (26) mounted on the lid for rotation relative to thereto and for location within the container, the blending

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means further being drivably connectable to drive means external to the container (see col. 1, line 67 to col. 2 line 2), the impeller being united with the lid during use (see Figs. 1 and 3; col. 2, lines 3-14); and securing means arranged to engage the vessel during blending (see lower portion of container in Fig. 1; col. 2, lines 1-2), wherein the container is nestable with other container vessels by a lower narrower end of the vessel being locatable into the upper opening of another vessel (see Fig. 1; col. 1, lines 60-65). Claims 60 and 61 fail to further structurally limit the claimed apparatus. These claims discuss a "seating" and "heating means" which are not part of the claimed apparatus. As discussed above with regard to section 112, second paragraph, it is especially unclear what is being claimed in claim 62. To the extent that claim 62 is only directed to "A container", it is considered that claim 62 fails to further limit the claimed container, because it only further limits a device intended to be used with the container, rather than limiting the claimed container. Regarding claims 63 and 64, Waters ('596) discloses an opening (40) through the lid, the opening being closed (by closure 41). Regarding claim 74, Waters ('596) discloses a blending apparatus for blending food products comprising a vessel (11) having an upper opening through which food product is chargeable into the vessel, a lid (20,21,22,23) for closing the upper opening, blending means (including 24,25,26,27) for blending the food product in the vessel, drive means (see col. 2, lines 1 and 2) for driving the blending means during blending; and an adapter (17,16,32) interconnecting the blending means and the drive means, the adapter including a coupling drivably engageable at one end with the blending means, and at the opposite end with the drive means, the blending means including an impeller

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(26) mounted on the lid for rotation relative thereto and for location within the vessel, the impeller being united with the lid during use, wherein the vessel is nestable with other vessels before assembly with the lid (see Figs. 1 and 3; col. 1, lines 59-65). Regarding claim 75, mounting means include drive means (see col. 2, lines 1-2), and the adapted is arranged to fit at one end onto the mounting means, and, at the other end the adapted is capable of receiving said vessel in an inverted position (see Fig. 1).

Regarding claim 77 Waters ('596) discloses a container for blending a food product comprising a vessel (11) having an opening for receiving food product; a lid (20,21,22,23) securable to the vessel for closing the opening; and an impeller (26) integrated with the lid and rotatable relative to the lid, the impeller being coupleable with a drive motor to effect rotation of the impeller within the vessel. Regarding the stipulation "are constructed of disposable materials suitable for a single use". It has been held that "the manner or method in which such a machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey*, 152 USPQ 235 (CCPA 1967). It is considered that the "disposable materials suitable for a single use" stipulation fails to distinguish the claim from the reference because regardless of the material from which it is made, any container is capable of being used one and disposed.

11. Claims 71-75 and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyce (US 4,487,509). Regarding claim 71, Boyce ('509) discloses a blending apparatus for food products comprising a vessel (12) and a lid (14) for the vessel, the lid housing blending means including an impeller (16) extending into the vessel in use and



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being rotatable relative to the lid, drive means (20) for driving the impeller, mounting means (18) for supporting the container, securing means (79) arranged to engage the container during blending for securing the vessel onto the mounting means, and drive connection means (112) for connecting the drive means and the impeller, the vessel being nestable with other vessels (see Fig. 3). Regarding claim 72, the vessel is invertably mounted on the container mounting means during a blending operation, the blending means extending upwards into the vessel, the securing means restraining movement of the container from a blending position (see Figs. 1 and 3). Regarding claim 73, the apparatus comprises a jug (78) into which the vessel is located during a blending operation, wherein the vessel is secured on the mounting means during blending (see Figs. 1 and 3). Regarding claim 74, Boyce ('509) discloses a blending apparatus for food products comprising a vessel (12) having an upper opening through which food is chargeable into the vessel, a lid (14) for closing the upper opening, blending means (including 16) for blending the food product in the vessel, drive means (20) for driving the blending means during blending; and an adapter (112) interconnecting the blending means and the drive means, the adapter including a coupling (114) drivingly engageable at one end with the blending means and at the opposite end with the drive means (see col. 4, lines 34-53), the blending means including an impeller (16) mounted on the lid for rotation relative thereto and for location with the vessel, the impeller being united with the lid during use, wherein the vessel is nestable with other vessels before assembly with the lid (see Fig. 3). Regarding claim 75, the apparatus comprises mounting means (18,20) including the drive means, the

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adapter being arranged to fit at one end onto the mounting means, and, at the other end, the adapter being arranged to receive said vessel in an inverted position (see Fig. 3). Regarding claim 77, Boyce ('509) discloses a container for blending a food product comprising a vessel (12) having an opening for receiving food product; a lid (14) securable to the vessel for closing the opening; and an impeller (16) integrated with the lid and rotatable relative to the lid, the impeller being coupleable with a drive motor to effect rotation of the impeller within the vessel. Regarding the stipulation "are constructed of disposable materials suitable for a single use". It has been held that "the manner or method in which such a machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey*, 152 USPQ 235 (CCPA 1967). It is considered that the "disposable materials suitable for a single use" stipulation fails to distinguish the claim from the reference because regardless of the material from which it is made, any container is capable of being used one and disposed.

12. Claims 68 and 70 are rejected under 35 U.S.C. 102(b) as being anticipated by Marshall (US 4,708,487). Regarding claim 68, Marshall ('487) discloses a container lid (including 14 or a subportion thereof) comprising blending means including an impeller (50,52) arranged to be rotatable relative to the lid and having impeller blades (52) projecting from one side of the lid so that, when assembled with a container, the blades are rotatable within the container to which the lid is fitted (see Fig. 4), the impeller being located on the lid through an opening in the lid as a push fit through the opening and being secured in the opening by an integral clip (see col. 4, lines 39-40; col. 5, lines 20-25; Figs. 3-5). Regarding claim 70, the impeller includes a shaft (52) wherein the

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impeller includes a shaft forming an outer bearing surface against the walls of the opening into which it is located (see Figs. 4 and 5).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters (US 2,930,596), as applied to claim 59 above, in view of Socha (US 5,090,816). Waters ('596) fails to disclose the impeller being "of one piece plastics construction". Socha ('816) teaches an impeller of one piece plastics construction (see col. 3, lines 67-68; col. 4, lines 33-37; Figs. 1-3). It is considered that it would have been obvious to one of ordinary skill in the art to have made the impeller of Waters ('596) "of one piece plastics construction" because Socha ('816) teaches that an impeller of such construction provides the advantage of being impact resistant (see col. 3, lines 67-68). See also *In re Larson* 144 USPQ 347 (CCPA 1965) regarding the obviousness of one piece construction and *In re Leshin* 125 USPQ 416 (CCPA 1960) regarding the obviousness of making parts from plastic.

15. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (US 4,708,487), as applied to claim 68 above, in view of Socha (US 5,090,816). Marshall ('487) fails to disclose the impeller being "of one piece plastics construction". Socha ('816) teaches an impeller of one piece plastics construction (see col. 3, lines 67-

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68; col. 4, lines 33-37; Figs. 1-3). It is considered that it would have been obvious to one of ordinary skill in the art to have made the impeller of Marshall ('487) "of one piece plastics construction" because Socha ('816) teaches that an impeller of such construction provides the advantage of being impact resistant (see col. 3, lines 67-68). See also *In re Larson* 144 USPQ 347 (CCPA 1965) regarding the obviousness of one piece construction and *In re Leshin* 125 USPQ 416 (CCPA 1960) regarding the obviousness of making parts from plastic.

### ***Allowable Subject Matter***

16. While claim 76 is rejected under section 112, second paragraph herein above, if the specification and/or claim is clarified in a manner that it is clear that "locking tube 11" and "housing 7", in combination, are corresponding structure for the "means for releasably locating the vessel between a vessel support on which the lid is locatable and a securing member engagable with the vessel during a blending action", claim 76 would be allowable.

### ***Response to Arguments***

17. The examiner disagrees with applicant's assessment of the vessel of Boyce ('509) that vessel is not "nestable with other vessels". Applicant states the handle of the vessel of Boyce ('509) would prevent the recited nestability; however, the examiner disagrees for the following two independent reasons: Firstly, the claims do not require that the claimed vessel be nestable with other identical vessel, but mere that it be "nestable with other vessels". Obviously, the vessel of Boyce ('509) could be placed in a vessel with a diameter large enough to accommodate the handle, and/or smaller

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vessels with or without handles could be placed within the vessel of Boyce ('509).

Secondly, the handle of Boyce ('509) does not extend to the bottom (closed) end of the vessel, and leaves a substantial portion which could be inserted into another identical vessel. While the handle may limit the extent of insertion into an identical vessel, it certainly does not prevent nesting.

### ***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

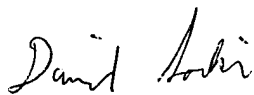
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin



CHARLES E. COOLEY  
PRIMARY EXAMINER